

New law changes procedures for abatement of interest

Assembly Bill 463 (Ch. 99-183) revised Revenue and Taxation Code section 19104 and changed the circumstances under which interest may be abated. In certain cases, the law now requires taxpayers to raise the interest abatement issue at the time of the appeal of the deficiency or be limited thereafter from raising the issue.

Also, R&TC section 19104 now provides specified limitations on the time for taxpayers to appeal and specifies the circumstances under which we will deny a request to abate interest. The revisions apply to requests for abatement of

interest filed on or after January 1, 2001.

Here are the other significant points of the law change:

- It clarifies that the interest on the deficiency, not the deficiency itself, is subject to abatement.
- It allows taxpayers who protest a deficiency to include a request of certain related interest in their protest.

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Franchise Tax Board revises position on S Corporations

High court says cancellation of debt income passes through to its shareholders

The United States Supreme Court, reversing the 10th Circuit Court, held in *Gitlitz v. Commissioner*, 2001-1 USTC 50,147, that the S Corporation's excluded discharge of debt is an item of income that passes through to the shareholders pursuant to Internal Revenue Code section 1366(a)(1)(A).

The cancellation of debt (COD) income increases the shareholder's stock basis before the tax attributes reduction takes

place pursuant to IRC section 108(b)(4)(A).

Previously, we took the position, consistent with the 10th Circuit Court, that the S Corporation's COD income does not pass through to the shareholder and does not increase the shareholder's basis. We have revised our position to

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Tax News

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TAX NEWS is a bimonthly publication of the Communications Services Bureau, California Franchise Tax Board. Its primary objective is to provide information to income tax practitioners about state income tax laws, regulations, policies and procedures.

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AB 463 changes how interest is abated

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- In circumstances where taxpayers have not included the request for abatement of interest during the original protest but later file an appeal of the proposed deficiency, taxpayers may include a request for the abatement of interest with their appeal of the underlying proposed deficiency.
 - It precludes taxpayers from making a separate request at a later time, if taxpayers have protested or appealed the underlying deficiency and have not made a request for abatement of interest during the protest or appeal.
 - If a taxpayer does not protest or appeal our adverse action on an underlying proposed deficiency and is only appealing our adverse action on a request to abate that interest, or is requesting an abatement of interest that has accrued between the time the deficiency was final and the time we issued the *Notice of Tax Due*, the taxpayer may make a request for the abatement of interest on FTB Form 3701, *Request for Abatement of Interest*. The form
- can be accessed on the Forms and Publications page of our website. Go to www.ftb.ca.gov, click on the *Forms and Publications* button and go to the *Miscellaneous Forms* section.
- If taxpayers are denied a request for abatement either by us issuing a *Notice of Action* or a *Notice of Determination*, taxpayers may appeal to the State Board of Equalization within 30 days of the date on the notice for unpaid interest, and 90 days for paid interest. **Note:** This differs from the previous time period to file an appeal on the denial of interest abatements, which was 180 days.
 - If we do not respond to taxpayers' request for abatement of certain interest within six months (not including requests made at protest or appeal), they may treat their request as if it was denied and file an appeal with the BOE within the above referenced timeframes.

To access the complete text of AB 463, go to the *Official Site for California Legislative Information* at www.leginfo.ca.gov.

Legislative analyses on Internet

Would you like to know more about a legislative measure you read about in Tax News? We post analyses of legislation on our website. Go to www.ftb.ca.gov and click on the *Law and Legislation* button. There you will find a preview of proposed tax law changes and how they might affect your clients if the legislation becomes law.

We also post proposed and final regulations, legal notices and rulings, and links to the Revenue and Taxation Code and the California Code of Regulations.

You can find legislative measures at www.leginfo.ca.gov, the *Official California Legislation Information* website.

FTB conforms with Supreme Court decision

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conform to the U.S. Supreme Court decision to allow the S Corporation to pass the COD income to the shareholder and increase the shareholder's basis. The basis increase takes place at the time of the discharge (the year in which the COD income is incurred), and before the tax attributes reduction (the year following the discharge).

Treasury Regulation section

1.1366(a)(2)(viii) was recently amended to specifically state that the COD income is not tax-exempt income. Nevertheless, the U.S. Supreme Court decision holds that S Corporation COD income is an item of income for pass through purposes per Internal Revenue Code section 1366.

Treasury Regulation section

1.1366(a)(2)(viii) no longer has a bearing on the COD income issue. We will apply this position for all tax years retroactively. Please keep in mind that the statute of limitations for all tax years is still applicable and requests for

refunds must be filed prior to the expiration of the statute of limitations. As with any other claims/amended returns, the returns may be subject to examination, and taxpayers should be prepared to provide supporting documents upon request.

Your clients should consider filing an amended return if the statute of limitations is open, and if:

- The S Corporation had COD income.
- The S Corporation was insolvent at the time of the discharge.
- Their proportionate share of the S Corporation's COD income did not increase the shareholder's basis.
- They previously filed a return and/or paid taxes based on our previous position.

Important: To ensure prompt handling of your claim or amended return, write *S Corporation COD Giltitz* prominently on top of the return.

Interest Rates

For the period of July 1, 2001, through December 31, 2001, the interest rate on underpayments and overpayments of California income taxes will be **nine percent**.

The following table lists interest rates since July 1990.

Effective Date	Rate	Effective Date	Rate
1 July 1990 to 31 Dec. 1990	11%	1 Jan. 1996 to 30 June 1996	9%
1 Jan. 1991 to 30 June 1991	11%	1 July 1996 to 31 Dec. 1996	9%
1 July 1991 to 31 Dec. 1991	10%	1 Jan. 1997 to 30 June 1997	9%
1 Jan. 1992 to 30 June 1992	10%	1 July 1997 to 31 Dec. 1997	9%
1 July 1992 to 31 Dec. 1992	9%	1 Jan. 1998 to 30 June 1998	9%
1 Jan. 1993 to 30 June 1993	8%	1 July 1998 to 31 Dec. 1998	9%
1 July 1993 to 31 Dec. 1993	7%	1 Jan. 1999 to 30 June 1999	8%
1 Jan. 1994 to 30 June 1994	7%	1 July 1999 to 31 Dec. 1999	7%
1 July 1994 to 31 Dec. 1994	7%	1 Jan. 2000 to 30 June 2000	8%
1 Jan. 1995 to 30 June 1995	8%	1 July 2000 to 31 Dec. 2000	8%
1 July 1995 to 31 Dec. 1995	9%	1 Jan. 2001 to 30 June 2001	9%

Ask the Advocate



Debbie Newcomb
Taxpayer
Advocate

Q: I am having trouble trying to resolve problems with several tax agencies. I heard that most tax agencies have advocates. Can you tell me how I contact them?

A: If you have tried to resolve your tax issue through normal channels without success, you may contact the following taxpayer advocate or problem resolution offices:

For federal tax issues contact:
Internal Revenue Service
Telephone: (877) 777-4778
Internet: www.irs.gov

For sales and use taxes, property taxes, and special taxes contact:
Board of Equalization Taxpayers' Rights
MIC 70
PO Box 942879
Sacramento CA 94279-0070
Telephone: (888) 324-2798
Fax: (916) 323-3319
Internet: www.boe.ca.gov/tra.htm

For employment taxes contact:
Employment Development Dept
Problem Resolution Office
MIC 93
PO Box 826880
Sacramento CA 94280-0001
Telephone: (916) 654-8957
Fax: (916) 654-6969
Internet: www.edd.ca.gov

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You can e-file until Oct. 15

You can still e-file California tax returns during the six-month extension period following the April 16, 2001 deadline.

We will accept e-filed returns until October 15, 2001. The extended due date for the Internal Revenue Service is August 15, 2001.

Take advantage of the many benefits of e-file. If you are not yet an approved Electronic Return Originator (ERO) and you want to e-file your client's tax returns during the extension period, request an e-file application (Form 8633) by calling (916) 845-0353.

FTB eases criteria for claiming teacher retention credit

The *Teacher Retention Credit Form* (Form 3505) requires teachers to enter the date they received their certification and their credential number. Some teachers, being unable to find their original teaching credential, have called the Commission on Teacher Credentialing for help. Generally, these questions are in regard to older credentials that the commission has archived on microfiche, and searching is very time consuming. The volume of inquiries has created a backlog and makes it difficult for the commission to do its ordinary work of processing new (and renewing) credentials.

To make it easier on taxpayers and the commission, we agree to accept the

teacher's current credential number and the year they received their first preliminary or clear credential. Because teachers must calculate how many years they have taught with a preliminary or clear credential in order to determine their credit, they must know when they started. If they don't have that information, they should get a copy of the credential before claiming the credit. Teachers, like all taxpayers, are responsible for the accuracy of their return. They should keep records of how they computed their years of service along with copies of related credentials with their tax records.

For more information, please check our web page: www.ftb.ca.gov/other/Teacher/TRC.htm.

Board of Equalization provides variety of translated tax information on Internet

To better meet the needs of California's culturally diverse population, the California State Board of Equalization now offers web-based tax information in a number of languages. These documents are available free of charge at the *Translated Publications* section of their web site (www.boe.ca.gov/transpubs.htm). Claude Parrish, Chairman, State Board of Equalization and member, Franchise Tax Board, remarked: "The Board has been translating tax-related information for some time, making this information accessible through the Internet is just one more way we can increase our service to the public."

The Board of Equalization recorded 1,447,219 hits on their web site last month and expects these translated publications to generate even more usage. Currently there are links to documents in four languages: Chinese, Korean, Spanish and Vietnamese.

Translations currently available include:

- *Your California Seller's Permit* (Chinese, Korean, Spanish, Vietnamese)

- *Guide to Board of Equalization Services* (Chinese, Korean, Spanish, Vietnamese)
- *The California Taxpayers' Bill of Rights* (Chinese, Korean, Vietnamese)
- *Tax Tips for Grocery Stores* (Chinese, Spanish, Vietnamese)
- *Filing Instructions for Sales and Use Tax Accounts on a Quarterly and Prepayment Basis* (Chinese, Korean, Spanish, Vietnamese)
- *Audits* (Korean, Spanish)
- *Tax Tips for the Dining and Beverage Industry* (Korean, Spanish)
- *Tax Tips for Auto Repair Garages* (Spanish)
- *Tax Tips for Sales to Purchasers from Mexico* (Spanish)
- *Guide to the International Fuel Tax Agreement* (Spanish)
- *The International Fuel Tax Agreement* (Spanish)
- *Closing Out Your Seller's Permit* (Spanish)

FTB helps with SDI computation

Midyear rate change causes some confusion

A midyear rate change to the California State Disability Insurance (SDI) has caused confusion and frustration for those trying to file claims for SDI overpayments.

Fortunately, today there's relief for a condition that was created nearly a year ago.

The Taxable Wage Base subject to the SDI tax is currently \$46,327. Taxpayers who had two or more employers during 2000, received more than \$46,327 in wages, and whose SDI withholding appears on their Forms W-2 *Wage and Tax Statement* are eligible to claim a credit for any overpayment in SDI they've made during the tax year.

Effective April 1, 2000, the SDI contribution rate increased to 0.7 percent from 0.5 percent (of covered wages). For wage earners filing a 2000 tax return, the change meant that there were two SDI contribution rates in effect for tax year 2000. See the chart below:

Wages Paid During	Contribution Rate
January 1 - March 31	0.5% (.005)
April 1 - December 31	0.7% (.007)

To apply the appropriate rate to the appropriate earnings, taxpayers must know how much they were paid during the first quarter of 2000. Their Forms W-2 are of limited use because it does not break out the wages earned by quarters. Taxpayers have to resort to other, more difficult ways of finding their first quarter earnings, including going over first quarter paycheck stubs (or similar documentation) and contacting their first quarter employer(s). It's a bothersome additional step.

If you're experiencing difficulties with your clients' SDI calculations, we can help. Call our **Tax Practitioner Services Hotline** at (916) 845-7057. If the first quarter

information is available, we will give you the information reported. If the first quarter information has not been reported, we will still try to locate your clients' wages; however, be advised that we may not be able to. If we can't, please use your clients' first quarter paystubs or estimate the first quarter wages, using the worksheet in the 540/540A tax booklet on page 18, the 540NR on page 20 or the 540A *Senior Special Addition* on page 24.

You can also advise your clients to contact our general toll-free telephone service for help in determining their first quarter wages. We'll verify their first quarter wages and assist them in completing the worksheet. The toll-free number for taxpayers is (800) 852-5711.

Related notes:

The SDI withholding rate for 2001 is 0.9 percent. The SDI taxable wage limit remains at \$46,327 per employee. If you have any questions about the SDI rate change, please call the EDD toll-free number (888)-745-3886 or visit your local Employment Tax Customer Service Office.

Tax Practitioner Services

Need answers fast? Call any one of our **Tax Practitioner Services Hotline** telephone numbers.

Tax Practitioner Hotline

Telephone(916) 845-7057

Fax(916) 845-6377

Personal Income Tax Collection

Fax(916) 845-0494

Business Entities Collection

Fax(916) 845-0145

FTB e-file Help Desk

Telephone(916) 845-0353

Ask the Advocate

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For California personal income taxes, bank and corporation taxes, homeowner and renter assistance, and nontax debt collection contact: Franchise Tax Board
Taxpayer Advocate Bureau
PO Box 157
Rancho Cordova CA 95741-0157
Telephone: (800) 852-5711
Fax: (916) 845-6614
Internet: www.ftb.ca.gov/taxpayer_advocate

Common advocate or problem resolution responsibilities are:

- Maintain an independent status and to provide independent review of taxpayers' problems
- Protect taxpayers' rights
- Problem resolution
- Adhere to agency tax laws
- Identify trends and issues
- Identify inequities
- Propose changes
- Provide understandable and simple, tax laws, regulation, policies, procedures, forms, and publications
- Ensure courteous public treatment
- Institute staying actions
- May temporarily stop collections while in review
- Encourage public suggestions

Any communication you have with an advocate or problem resolution office should specify what steps you have previously followed to resolve the problem and exactly what action you want the advocate to take. For instance, if your client's bank account has been levied and the action is creating a hardship, you will want to state this clearly in your correspondence, email or telephone call. You should also include a method of contacting you during business hours such as a daytime telephone number.

PROPOSED BILLS

Among the measures being considered by the California Legislature are several Franchise Tax Board (FTB) sponsored bills. Some of these bills also involve conformity.

AB 547 (Maldonado) **As introduced February 21, 2001**

This FTB sponsored bill would provide that a limited partnership, a limited liability company, or a registered limited liability partnership would not be assessed the minimum franchise tax and the annual tax, as applicable, in the year that a final return is filed, if the following two conditions are met:

- The entity ceases doing business prior to the beginning of the taxable year; and
- The dissolution, surrender, or cancellation of the entity is complete before the end of that year.

This bill also would allow certain suspended corporations to seek dissolution without requiring payment of the accrued tax liability for the years in which the corporation was inactive and not doing business. To have any outstanding tax, penalty, interest, or addition to tax cancelled, the corporation must meet certain conditions.

AB 816 (Thomson) **As introduced February 22, 2001**

This bill would repeal the filing requirement triggered by the sale of a principal residence when other items of gross income do not equal or exceed the filing threshold.

FTB is sponsoring this bill to conform California State law to federal practice so that taxpayers are not required to file unnecessary tax returns.

AB 894 (Nakano) **As Introduced February 23, 2001**

Under the Bank and Corporation Tax Law (B&CTL), this bill would allow

capital losses to offset any other income of a corporation for taxable years beginning on or after January 1, 2000. Allowing the deduction of the current year's capital loss would return California law to the way it was prior to the state adopting conformity to the federal capital loss limitations.

Capital loss carryover amounts from taxable years beginning before January 1, 2000, would continue under the current rules (i.e., capital losses may be deducted only to the extent of capital gains and excess capital losses may be carried forward for five years).

In addition, the bill contains the following capital loss credit that was not sponsored by FTB. A corporation would recompute its tax liability each year from 1990-1999 as though capital losses had not been limited in those years. To the extent that the recomputed tax liability for those years was less than the actual aggregate tax liabilities for those years, a taxpayer could elect to take the excess as a credit against the corporation's tax liability starting in the year 2000. Any excess credit could be carried over until exhausted. The election would be irrevocable and would be made on a timely filed original return for its first taxable year beginning on or after January 1, 2000.

AB 1115 (Assembly Committee on Revenue and Taxation) **As introduced February 23, 2001**

This FTB sponsored bill would clarify the laws regarding nonresidents and part-year residents by:

- Specifying clear, definitive rules for calculating their loss carryovers, deferred deductions, and deferred income.
- Allowing a prorated alimony deduction.
- Allowing the proration of itemized deductions in computing their taxable income.

AB 1116 (Assembly Committee on Revenue and Taxation) **As introduced February 23, 2001**

This FTB sponsored bill would make the following changes to the Revenue and Taxation Code:

- Eliminate adjustment to credit carryforwards from inclusion within the meaning of deficiency.
- Allow the department to issue a notice of proposed adjusted carryover amount that would afford taxpayers the right to dispute the adjustment in the same manner available for notices of proposed assessment.
- Specify that a law effecting a change in income tax withholding will apply to income tax withholding in the calendar year the provision is operative but not the year it is chaptered.

AB 1117 (Assembly Committee on Revenue and Taxation) **As introduced February 23, 2001**

This FTB sponsored bill would provide a general default rule that would allow holders of interests in pass-through entities, irrespective of the taxable year of the holder, to claim the pass-through credit. The general default rule would apply even if the pass-through entity files its returns on a fiscal year different than that of the holder of the interest and even if the operative date of the credit has expired, eliminating an inequity in law that may prohibit some holders from claiming their full tax benefits.

This bill also would eliminate conflicting statutory provisions that set forth the order in which credits are applied. This bill would require that the alternative minimum tax credit be applied before any credit that can reduce regular tax below the tentative minimum tax.

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PROPOSED BILLS

Continued from page 6

AB 1122 (Assembly Committee on Revenue and Taxation) As introduced February 23, 2001

This FTB sponsored bill would make the following changes to the Revenue and Taxation Code:

- Conform to federal provisions that permit electronic postmarks to be proof of the date e-file returns are deemed filed.
- Rename the *Bank and Corporation Tax Law* as the *Corporation Tax Law* and for consistency rename the *Bank and Corporation Tax Fund* as the *Corporation Tax Fund*. These changes are consistent with those changes made by AB 1040 (Stats. 1997, Ch. 605) that revised the definition of corporation to include banks.

AB 1320 (Rod Pacheco) As introduced February 23, 2001

This FTB sponsored bill would provide that the 25 percent penalty for notice and demand would be based on the tax required to be shown on the return reduced by the amount of timely payments and by the amount of any tax credits claimed upon the return. Thus, this bill would eliminate the penalty if the taxpayer had properly filed a tax return and would have been owed a refund.

SB 324 (Ackerman) As introduced February 20, 2001

This FTB sponsored bill would amend the Corporations Code to allow the Secretary of State to file an agreement of merger of two or more corporations without receipt of the *Certificate of Satisfaction* from the FTB if the surviving corporation is a domestic corporation or foreign corporation qualified to do business in this state.

Thus, this bill would reduce the complexity of merger transactions and would eliminate delays.

SB 657 (Scott) As introduced February 23, 2001

This FTB sponsored bill would grant FTB, in its discretion, the authority to perfect water's-edge elections. In addition, for taxable years beginning on or after January 1, 2001, this bill would eliminate the election by contract. Instead, the election would be made on a timely-filed original return and would be considered valid if both of the following conditions are met:

- The return tax is computed on the water's-edge basis; and
- Written notification of the election is filed as prescribed by FTB.

FTB would be permitted to consider other objective evidence that a water's-edge election was intended. The bill also would specify those conditions in which a taxpayer would be deemed to have made an election. A taxpayer that is engaged in more than one apportioning business would be permitted to make a separate election for each apportioning trade or business. The election would be for a period of 84 months. The election may be terminated prior to the end of the 84-month period for good cause, upon consent of the FTB.

SB 906 (Bowen) As introduced February 23, 2001

This FTB sponsored bill would allow a taxpayer to file a claim for refund before the tax is fully paid, and thereby toll the refund statute of limitations.

This bill generally would apply to claims for refund filed on or after January 1, 2002, without regard to taxable year. Installment payments could only be refunded to the taxpayer if a claim for refund is filed within one year of the date of the installment payment. Thus,

installment payments made before January 1, 2001, would not be subject to a refund under this bill.

SB 1185 (Senate Committee on Revenue and Taxation) As introduced February 28, 2001

This FTB sponsored bill would make the following changes to the Revenue and Taxation Code:

- Clarify the vouchering requirements by amending the definition of *qualified employee* in the enterprise zone, local agency military base recovery areas, and targeted tax area hiring credits with express references to the *Jobs Training Partnership Act* (JTPA) definitions as they existed on and before June 30, 2000.
- Conform to provisions of federal law that permit electronic postmarks to be proof of the date e-file returns are deemed filed.
- Rename the *Bank and Corporation Tax Law* as the *Corporation Tax Law* and for consistency rename the *Bank and Corporation Tax Fund* as the *Corporation Tax Fund*. These changes are consistent with those changes made by AB 1040 (Stats. 1997, Ch. 605) that revised the definition of corporation to include banks.

SB 1186 (Senate Committee on Revenue and Taxation) As introduced February 28, 2001

This FTB sponsored bill would amend 12 code sections in the Revenue and Taxation Code by replacing the obsolete term *income year* with the term *taxable year*.

This bill also would replace the obsolete term *Job Training Partnership Act* with the term *Workforce Investment Act of 1998* so that state law references current federal law.

FTB announces Year 2000 tax form clarifications

Please note the following corrections to tax year 2000 California tax forms and instructions. Should you have any questions about these clarifications, contact our Tax Forms Development and Distribution Section at (916) 845-3442.

Form 100, California Corporation Franchise or Income Tax Return, Side 2, Schedule D – California Capital Gains and Losses, Part II – Long-Term Capital Gains and Losses – Assets held More Than One Year, Line 6. Line 6 has been revised to read as follows:

Enter gain from Schedule D-1, line 9 and/or any capital gain distributions...

The error is in Package X (paper and CD-ROM, *Release 00.1 and Release 00.2*). The Internet version is correct.

Form 100W, California Corporation Franchise or Income Tax Return – Water's-Edge Filers, Side 2, Schedule D – California Capital Gains and Losses, Part II – Long-Term Capital Gains and Losses – Assets Held More Than One Year, Line 6. Line 6 has been revised to read as follows:

Enter gain from Schedule D-1, line 9 and/or any capital gain distributions...

The error is in Package X (paper and CD-ROM *Release 00.1 and Release 00.2*). The Internet version is correct.

California Schedule D (100S), S Corporation Capital Gains and Losses and Built-In Gains, Side 2, Section B – 1.5% Tax on Capital Gain, Part II – Long-Term Capital Gains and Losses – Assets Held More Than One Year, Line 5. Line 5 has been revised to read as follows:

Enter gain from Schedule D-1, line 9 and/or any capital gain distributions...

The error is in Package X (paper and CD-ROM, *Release 00.1 and Release 00.2*). The Internet version is correct.

California Personal Income Tax Booklet, page 9 of the *Instructions for Form 540A*, and *California Special Edition for Seniors Personal Income Tax Booklet*, page 21 of the *Instructions for Form 540A, California Itemized Deductions Worksheet* section, Line 1. Line 1 has been revised to read as follows:

Federal itemized deductions: Add the amounts on federal Schedule A (For 1040), lines 4, 9, 14, 18, 19, 26, and 27.

The error is in Package X (paper and CD-ROM, *Release 00.1 and Release 00.2*). The Internet version is correct.

Form FTB 3805V, Net Operating Loss (NOL) Computation and Disaster Loss Limitations – Individuals, Estates, and Trusts, Page 3 of *Instructions, Part III – Limitations*, center column, the section entitled *Form 540NR filers*: This section has been revised to read as follows:

To figure your new business or eligible small business loss from all sources, enter the amount of the new business or

eligible small business NOL included in Part I, Line ~~24~~, 28. To figure your new business NOL or eligible small business NOL from California sources, enter the amount of the new business or eligible small NOL from Part I, Line ~~30~~, 37.

The error is in Package X (paper and CD-ROM, *Release 00.1 and Release 00.2*). The Internet version is correct.

Form FTB 3805V, Net Operating Loss (NOL) Computation and Disaster Loss Limitations – Individuals, Estates, and Trusts, page 3 of *Instructions, Part III – Limitations*, center column, the section entitled *Form 540NR filers*: This section has been revised to read as follows:

To figure your new business or eligible small business loss from all sources, enter the amount of the new business or eligible small business NOL included in Part I, Line ~~24~~, 28. To figure your new business NOL or eligible small business NOL from California sources, enter the amount of the new business or eligible small NOL from Part I, Line ~~30~~, 37.

The error is in Package X (paper and CD-ROM, *Release 00.1 and Release 00.2*). The Internet version is correct.

Use Form 100X to amend corporation return

Corporations sometimes file two returns for the same year. Typically they intend for one to be an amended return and may even stamp *amended* at the top of the return.

Done incorrectly however, this practice can create problems instead of solving them. Sometimes the amended return that was filed on a

Form 100 gets processed as an original return *before* the original return. Or, there's a delay in processing the amended return.

To avoid these problems, please use the Form 100X, *Amended Corporation Franchise or Income Tax Return* to file the amended return and file it only after the original return has been filed.

Federal, state laws concur on taxpayer's treatment of readily tradable stock

2001 *Deemed-Sale-and-Repurchase* Election Applies to California

Question: What is this election?

Answer: Under federal and California law, if you are an individual taxpayer, you can elect to treat any readily tradable stock (which is a capital asset) you hold on January 1, 2001, and do not sell before January 2, 2001, as having been sold **and** reacquired on January 2, 2001, for an amount equal to its closing market price on January 2, 2001.

You can elect to treat your other capital assets or property used in a trade or business and held on January 1, 2001, as having been sold **and** reacquired on January 1, 2001, for an amount equal to its fair market value on January 1, 2001.

Question: How do I recognize a gain or loss as the result of the election?

Answer: Under federal and California law you treat any **gain** as received or accrued on the date the asset is treated as sold and recognized (included as income) in the taxable year, to the extent the law allows.

The law does not allow any **loss** resulting from the election for any taxable year.

Question: How do I make this election?

Answer: First, you must specify the assets for which you are making the election. The U.S. Treasury Secretary prescribes how to do this, and once made with respect to any asset, the election is irrevocable.

Question: Can I make a different California election?

Answer: Yes. Under normal California election rules, your federal election applies for California purposes unless you choose a different treatment for state purposes. In that case, you can make a separate California election.

The separate California election to retain the asset's original basis and date of acquisition is to be made using the same mechanism specified by the Treasury Secretary for making the federal election.

If you make this separate California

election, you must subtract from your return for the taxable year of the deemed sale any **gain** recognized as a result of the federal election which has been included in federal adjusted gross income (the starting point of the income computations on the California return for 2001).

If you make a separate California election, please note that if you sell the asset in a subsequent taxable year, the gain or loss recognized on that asset's sale will be different for California than for federal purposes. You will need to make a California adjustment on your state return for that subsequent year.

Question: What federal law allows this election, and how has California conformed?

Answer: The federal Taxpayer Relief Act of 1997 (Public Law 105-34) provided this uncodified election in Act Section 311(e) of that law. In 1998, California Assembly Bill 2797 (Chapter 322) conformed our state to this election.

INC Update:

New program uses Schedules K-1 to locate corporate nonfilers

In the past we've used K-1 income information to identify individual partners, but not business entity partners. That will change this year. Our new Integrated Nonfiler Compliance Program (INC) for business entities is now able to use partnership K-1s to identify additional corporate nonfilers.

INC will use K-1 income information to identify corporations who had a partnership interest in California partnerships during the 1999 tax year.

Here's how it works: Partnership income and losses flow through to the partners. They maintain the same character as they

flow through to the partners and are reported on each partner's Schedule K-1. If the K-1 shows California sourced income, there is a potential California franchise tax due or income tax filing requirement. If the corporate partner has not filed a return, we will request a California tax return from them.

Audit program completes townhall meetings

During the months of January through March, our Audit Division staff held townhall meetings in Houston, New York, Chicago, Los Angeles, and Oakland to discuss ideas regarding best audit practices.

These meetings provided us with valuable input on best audit practices

that taxpayers would like incorporated into our audit process.

You can find a summary of the ideas presented at these meetings on our website under *Proposed Regulation 19032*, at the following address: www.ftb.ca.gov/legal/index.htm#PRegulations

We are currently evaluating all of these ideas and determining those that can be implemented.

Those audit practices eventually adopted will help ensure that we use a more effective and efficient audit process. We will provide updates on our progress, with the first update scheduled for the latter part of 2001.

Time for 4th annual e-file software workshops

The e-file software workshops we conduct with the Internal Revenue Service generate more and more interest each year among tax professionals who are serious about joining the e-file program and want to find out more about e-file software.

If you haven't participated in prior years, now is the time to get on board for 2001. We plan to offer eight one-day sessions in seven California locations during June.

The typical schedule for the day is 9 am - 4 pm. The first half of the day is filled with information about the IRS and FTB e-file programs, news, changes, requirements, etc.

The second half of the day is all yours and features a panel of software industry experts. This is where you get a chance to ask representatives from various software companies about their products. Here's the proposed schedule. Check

back at our website at www.ftb.ca.gov for information about where the events will be held.

- June 13 Burbank
- June 14 Burbank
- June 15 Escondido
- June 16 San Bernardino
- June 19 Oakland
- June 20 Sacramento
- June 21 San Jose
- June 22 Oxnard

FTB's Direct Filing Portal: Example of E-Government at work

This year more than 16,000 individual taxpayers filed their state returns online using our *Direct Filing Portal*.

They transmitted their return directly to us via the Internet. We in turn provided them with confirmation numbers and acknowledgments. Throughout the process, they monitored the progress of their return online.

And they were able to do it all without using a third party transmitter.

When we asked tax practitioners in a recent survey if they would be interested in using the filing portal, approximately 87 percent of the respondents said yes.

As a result, we are looking at making the filing portal available to tax practitioners.

If we do, you too will be able to transmit California personal income tax returns directly to us, either one-at-a-time or in batches, and without using a third-party transmitter.

If you use the portal to file your clients' returns, you could save money on the per-return transmission costs you may incur with modem e-filing. And since you are dealing directly with us, there are no delays between the time you transmit the electronic return and when we receive it. There's no need to wait for a third party transmitter to send the

acknowledgement files back to you and the transmission is via an encrypted connection so it's secure.

We are encouraging e-file software developers to include a direct filing portal option in their software products so that you won't have to consider changing software in order to use the filing portal.

Check with your software vendor now to find out if they have plans to include the direct filing portal option in their program in the future.

For more information about our portal, go to www.ftb.ca.gov/dfp/index.htm or call the e-file Help Desk at (916) 845-0353.

New date for filing homeowner and renter claims

Filing period begins July 1; FTB to issue claim forms in June

Please advise your clients that the filing period for the Homeowner and Renter Assistance (HRA) program has changed. This year's filing period begins on July 1, 2001.

The purpose of the new HRA filing period is to reconcile the start of the

filing period with the beginning of California's fiscal year, since funding for this program is not available until the Governor signs the state budget.

In an effort to file their HRA claim as quickly as possible, some well-intentioned claimants have modified the old 2000 claim form, completed it with current year information, and submitted it already. In some cases, these claim forms have been submitted along with their tax return. We cannot process 2001 claims until July 1, 2001.

Note: Official FTB claim forms for the 2001 filing season will be available via the Internet, on June 15, 2001. To get downloadable claim forms, visit us at www.ftb.ca.gov and go to the *Forms and Publications* website.

Not too late to file last year's claim

If some of your clients were eligible to but did not file an HRA claim for the previous claim period, it's not too late. We will accept claim forms for the previous claim period until June 30, 2001.

Economic Development Areas Manual now online

Did you know that our Economic Development Areas (EDA) manual is available for viewing online?

The EDA manual is one of several in-house resources we put online. It provides technical guidance on the tax incentives associated with the economic development areas including Enterprise Zones, Local Agency Military Base Recovery Areas, Targeted Tax Areas and

Manufacturing Enhancement Areas. In fact, several of our internal procedure manuals online for practitioners and taxpayers are available for viewing or downloading from our *Forms and Publications* website located at www.ftb.ca.gov/manuals/index.htm. Manuals you'll find there include our:

- *Bank and Financial Handbook*
- *Collection Procedure Manual*

- *General Tax Audit Manual*
- *Multistate Audit Techniques Manual*
- *Water's-Edge Manual*

Note: The information provided in our internal procedure manuals does not reflect changes in law, regulations, notices, decisions, or administrative procedures that may have been adopted since the manual was last updated.

Track FTB E-Government's progress on our website

Our *E-Government Blueprint* is available on our website at www.ftb.ca.gov/other/egov_937b.pdf.

In the blueprint we lay out our high-level vision and goals in the area of E-Government, discuss our more specific objectives relative to those goals, and set forth the high-level strategies that will help us deal with issues along the way.

The initial response to the blueprint from representatives in the tax practitioner and electronic tax preparation industries has been positive.

In order to give more value to our clients, we have launched a comprehensive effort to research taxpayer and tax practitioner preferences relative to E-Government services through the use of surveys,

focus groups, and other methods.

In addition, we will continue to seek your input and provide you with updates on our progress at conferences and meetings, and through our Speakers' Bureau, articles in *Tax News*, and the electronic suggestion box that accompanies the E-Government Blueprint on our website.

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